

Decision **DRAFT DECISION OF ALJ McVICAR** (Mailed 9/20/2002)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

City of Encinitas,

Complainant,

vs.

North San Diego County Transit Development Board  
dba North County Transit District,

Defendant.

Case 01-11-006  
(Filed November 7, 2001)

**OPINION DISMISSING COMPLAINT**

**Summary**

City of Encinitas seeks a Commission order requiring North San Diego County Transit Development Board to comply with Public Utilities Code Section 125260 in connection with construction of a railroad passing track within the City. The complaint is dismissed for lack of jurisdiction. This proceeding is closed.

**Background**

City of Encinitas, in San Diego County, charges that the North San Diego County Transit Development Board (also known as North County Transit

District, or NCTD) is in violation of Public Utilities Code Section 125260<sup>1</sup> by having authorized the construction of a railroad passing track in the City of Encinitas without having conducted the environmental analysis required by the 2020 Regional Transportation Plan (RTP) adopted by the San Diego Association of Governments (SANDAG). SANDAG is designated and recognized by federal and state agencies as the metropolitan planning organization and regional transportation planning agency for San Diego County.

City would have the Commission direct NCTD to comply with the RTP and commence the necessary environmental analysis, or, in the alternative, enjoin NCTD from any further implementation of the passing track until it has done so.

NCTD was created by Senate Bill 802<sup>2</sup> in 1975 to acquire, construct, maintain, and operate public transit systems and related facilities within its jurisdictional area in San Diego County. In 1992, NCTD acquired the railroad right-of-way known as the San Diego main line from the Orange County line to the southern Del Mar city limit, and San Diego's Metropolitan Transit Development Board (MTDB) simultaneously acquired the railroad right-of-way within the limits of the City of San Diego. NCTD constructs improvements and maintains and operates the railroad right-of-way within both ownership areas pursuant to a shared-use agreement with MTDB and the Burlington Northern and Santa Fe Railway Company (BNSF).

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<sup>1</sup> Statutory references are to the Public Utilities Code unless otherwise noted.

<sup>2</sup> The North San Diego County Transit Development Board Act, Pub. Util. Code, Division 11.5, § 125000 et seq.

Section 125260 provides,

The board shall plan, construct, and operate (or let a contract to operate) public transit systems in conformance with the regional transportation plan developed pursuant to Chapter 2.5 (commencing with Section 65080) of Title 7 of the Government Code and the five-year transportation improvement program developed pursuant to Section 134 of Title 23 of the United States Code.

Government Code Section 65080 specifies that actions by transportation agencies, including transportation development boards, must be consistent with the applicable regional transportation plan, which in this case is SANDAG's 2020 RTP.

NCTD has plans to construct and operate a passing track approximately 1.7 miles long, located adjacent to the San Diego main line in the City of Encinitas. NCTD describes the San Diego main line as "part of the interstate rail system extending throughout the United States and [] the only interstate rail line connecting San Diego to Orange County." NCTD operates the Coast Express Rail (Coaster) commuter rail service between Oceanside and San Diego over the San Diego main line. Under the shared-use agreement, the National Railroad Passenger Corporation (Amtrak) operates interstate and inter-city passenger service over the line, and BNSF uses it to provide interstate freight service. NCTD says the purpose of the planned passing track is to improve the quality and reliability of interstate freight, inter-city passenger and commuter service on the San Diego main line.

City charges that NCTD's passing track is intended to be part of a larger plan contemplated under the RTP of double-tracking the entire coastal corridor. According to City, the RTP specifically requires that NCTD, in cooperation with MTDB, Amtrak and the state, conduct project-level environmental studies as part of its design and implementation of double-track and other rail improvements in



the coastal railroad corridor. City's complaint and subsequent filings provide additional explanation of SANDAG's intent for such studies in connection with the RTP, but those explanations need not be detailed here. NCTD's decision to proceed with the passing track without complying with the RTP's environmental requirements, City contends, places it squarely in violation of the RTP, and thus Public Utilities Code Section 125260 and Government Code Section 65080.

Assigned Administrative Law Judge (ALJ) McVicar held a prehearing conference in Los Angeles on February 22, 2002, at which he directed the parties to file prehearing briefs and reply briefs on the following threshold issue:

Does the Commission have jurisdiction to enforce North San Diego County Transit Development Board's compliance with Public Utilities Code Division 11.5, the North San Diego County Transit Development Board Act? And, more specifically, does the Commission have jurisdiction to require the Board's compliance with Public Utilities Code Section 125260 which requires the Board to "... plan, construct, and operate (or let a contract to operate) public transit systems in conformance with the regional transportation plan ... "?

## Discussion

NCTD's defense is threefold. First, it asserts that under Section 10501 of the Interstate Commerce Commission Termination Act (ICCTA), the federal Surface Transportation Board (STB) has exclusive jurisdiction over the construction of passing tracks such as this one, and that STB's authority preempts the jurisdiction of the Commission in this instance. Second, the Commission should not assert jurisdiction in this case because these same parties have already litigated the issues raised in the City's complaint and the City's claims are therefore barred by the doctrine of *res judicata*. Third, in the event the Commission does not agree that the ICCTA preempts the Commission's jurisdiction over the Encinitas passing track project, the City's action should still

be dismissed because the Commission does not have an independent basis upon which to enforce Section 125260.

As we explain below, since the complaint was filed, there have been significant developments elsewhere that bear directly on the merits of City's case. We address first NCTD's claims of exclusive STB jurisdiction and *res judicata*, and then the Commission's jurisdiction independent of the claim of federal preemption.

#### **A. STB's Jurisdiction, and *Res Judicata***

As its first defense, NCTD argues that under the ICCTA, STB has exclusive jurisdiction over the construction and operation of rail lines that are part of the interstate rail network. Among other things, the ICCTA provides:

The jurisdiction of the [Surface Transportation] Board over . . .  
(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or sidetracks, or facilities, even if the tracks are located, or intended to be located entirely in one state, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided in Federal or State law.<sup>3</sup>

NCTD goes on to cite a long line of cases upholding the broad language of 49 USC Section 10501. While it acknowledges that not all state and local laws are necessarily preempted, both the courts and STB have made clear that any exception to this rule applies only to laws that do not interfere with railroad operations. Further, both have made clear that state and local

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<sup>3</sup> 49 U.S.C. Part IV, Subtitle A, § 10501(b).

environmental and planning requirements do unduly interfere with railroad operations.

In August 2001, City filed an action with the San Diego County Superior Court seeking declaratory and injunctive relief preventing NCTD from building the passing track until it fulfilled state permitting requirements. On September 26, 2001, NCTD had the state court action removed to the United States District Court for the Southern District of California. On January 14, 2002, the District Court issued a decision finding that City's permitting process is preempted by 49 USC Section 10501(b), as broadened by the ICCTA, and dismissing the action.<sup>4</sup> The District Court determined that NCTD comes within the ICCTA's definition of a rail carrier and is thus subject to STB jurisdiction. Accordingly, "Although state and local governments may retain police powers for the purpose of protecting public health and safety, the ICCTA prohibits any government action or regulation which forecloses or restricts the 'railroad's ability to conduct its operation or otherwise unreasonably burden[s] interstate commerce.'"

NCTD argues that the District Court's determination was a judgment on the merits between the same parties and involving the same claims, and thus City's complaint before the Commission is barred by the doctrine of *res judicata*. City disputes that contention, but in light of the discussion below, we need not further pursue that aspect.

On October 11, 2001, NCTD filed a Petition for Declaratory Order with the STB, seeking to terminate the controversy over the applicability of 49 USC

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<sup>4</sup> See *City of Encinitas v. North San Diego County Transit Development Board, et al.*, Case No. 01-CV-1734-J (AJB).

Section 10501(b) and STB's jurisdiction. In December 2001, STB opened Finance Docket No. 34111 to consider the matter. On August 19, 2002, STB granted NCTD's request for a declaratory order, agreeing with the District Court's determination that STB has exclusive jurisdiction and prohibiting City from requiring NCTD to obtain permits or pre-approvals prior to constructing the Encinitas passing track.

Section 248 provides, "Any provision of the Public Utilities Act that is in conflict with the railroad provisions of Part A of Subtitle 4 of Title 49 of the United States Code [i.e., the ICCTA] shall be inapplicable to railroad transportation to the extent of that conflict." City would have the Commission enjoin NCTD from any further implementation of the passing track until it has complied with the RTP and commenced the necessary environmental analysis. The District Court and STB have both made clear that any such action by either state or local authorities would impinge upon the federal regulation of interstate commerce under the ICCTA. Thus, the Commission is without jurisdiction to grant the relief City seeks.

#### **B. The Commission and Public Utilities Code Section 125260**

City has indicated that it does not agree that either the District Court's decision or STB's decision is applicable to its request in this proceeding. Its reply brief indicated that it had filed an appeal of the District Court's decision with the federal Court of Appeals. STB decisions are likewise appealable to the Court of Appeals, and City's intent is as yet unknown in that regard. City maintains that, these federal decisions notwithstanding, the Commission is charged with enforcing the Public Utilities Code and may require NCTD, a creation of the Legislature, to bring its activities into conformance with Section 125260 and the Regional Transportation Plan. Thus, we examine next the Commission's



jurisdiction to do precisely what the City would have us do: enforce Section 125260 against NCTD.

As City acknowledges, “The NCTD is not a private corporation or simply a ‘rail carrier.’ Instead, the NCTD is a political subdivision of the State of California created by statute.” While the Commission does have jurisdiction to regulate public utilities, common carriers, and railroads generally, it is well established that the Commission’s jurisdiction does not extend to overseeing political subdivisions of the state absent specific legislation permitting it to do so:

Admittedly, the commission fulfills a vital and significant role in the scheme of government. In fact, it is the only public agency which is constitutionally constructed to protect the public from the consequences of monopoly in public service industries [citations omitted]. However, the primary function of the commission is to regulate private property dedicated to a public use and to exercise control over private companies engaged in public service [citations omitted]. Moreover, as a regulatory body of constitutional origin it has only such powers as it derives from the Constitution and the Legislature (Cal.Const, art XII, §23; *Television Transmission v Public Util. Com.*, 47 Cal.2d 82, 301 P.2d 862; *Northwestern Pac. R.R. Co. v Superior Ct.*, 34 Cal.2d 454, 211 P.2d 571). *Thus, in the absence of specific legislation to the contrary, the commission has no jurisdiction to regulate public districts or municipalities* (Los Angeles Met. Transit Authority v Public Utilities Com., 52 Cal.2d 655, 343 P.2d 913).<sup>5</sup> [emphasis added]

There are numerous examples in the Public Utilities Code of the Legislature’s having so empowered the Commission. The Commission is, for example, specifically directed under Section 309.7 “to enforce safety laws, rules,

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<sup>5</sup> *People ex. rel. Public Utilities Commission v City of Fresno* (1967) 254 Cal.App.2d 76, 81.

regulations, and orders, and to collect fines and penalties resulting from the violation of any safety rule or regulation” relating to the operations of railroads and public mass transit guideways. The Legislature through Section 99152 has likewise granted the Commission limited authority over public transit systems: “Any public transit guideway planned, acquired, or constructed, on or after January 1, 1979, is subject to regulations of the Public Utilities Commission relating to safety appliances and procedures.” The Commission has safety and other responsibilities in connection with various of California’s transit districts.<sup>6</sup> However, nowhere in the Public Utilities Code or elsewhere is the Commission empowered to enforce the legislative mandate requiring NCTD to act in conformance with the Regional Transportation Plan. City acknowledges as much: “The City is unaware of any specific statute authorizing the PUC to specifically enforce Public Utilities Code § 125260.”<sup>7</sup> Absent such specific authority, we again conclude that the Commission lacks jurisdiction to grant the relief City seeks.

### **Procedural Matters**

The Instructions to Answer sent to defendant NCTD on November 29, 2001, designated the assigned Commissioner and ALJ, and stated that this would be categorized as an adjudicatory proceeding and set for hearing. Neither party appealed the categorization as permitted under Rule 6.4(a), so we

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<sup>6</sup> See, e.g., BART safety, § 29047; Southern California Rapid Transit District safety, § 30646; San Diego County Transit District eminent domain valuation, § 90402; Santa Clara County Transit District eminent domain valuation and safety, § 100132 and § 100168, etc.

<sup>7</sup> City of Encinitas Opening Prehearing Brief, page 3.

see no need to disturb that designation. Because we have decided to dismiss the complaint, no scoping memo is necessary, nor is a hearing required.

Assigned ALJ McVicar's draft decision was served on the parties and made available for public review and comment as required by Section 311(g)(1). No comments were received.

### **Assignment of Proceeding**

Carl Wood is the Assigned Commissioner and James McVicar is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. United States District Court has determined that NCTD comes within the ICCTA's definition of a rail carrier and is thus subject to STB jurisdiction.
2. STB has issued a declaratory order agreeing with the District Court's determination that STB has exclusive jurisdiction, and prohibiting City from requiring NCTD to obtain permits or pre-approvals prior to constructing the Encinitas passing track.
3. NCTD is a political subdivision of the State of California.

### **Conclusions of Law**

1. The ICCTA prohibits any state or local government action or regulation which forecloses or restricts NCTD's ability to conduct its railroad operation or otherwise unreasonably burdens interstate commerce.
2. STB has held that it has exclusive jurisdiction over NCTD's rail transportation construction and operations.
3. Nowhere in the Public Utilities Code or elsewhere is the Commission empowered to enforce any part of the North San Diego County Transit Development Board Act.

4. Except where there may be specific legislation to the contrary, the Commission has no jurisdiction over public districts.
5. The Commission is without jurisdiction to grant the relief City seeks.
6. The complaint should be dismissed.
7. No hearing is required.
8. For administrative efficiency, this order should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The relief City of Encinitas seeks is denied.
2. The complaint in Case 01-11-006 is dismissed.
3. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.